

Approved as Submitted: March 1, 2006

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – FEBRUARY 15, 2006**

CALL TO ORDER

Mayor Pro Tempore/Vice-chair Grzan called the special meeting to order at 6:10 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, and Tate
Late: Council/Agency Member Sellers (arrived at 6:20 p.m.) and Mayor/Chair Kennedy (arrived at 6:30 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Interim City Attorney/Agency Counsel Siegel announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al. [Consolidated Actions]
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561
Attendees: City Manager, Interim City Attorney

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: Berkman v. City of Morgan Hill et al.
Case Number: Santa Clara County Superior Court, 1-04-CV-031021
Attendees: City Manager, Interim City Attorney

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: Tichinin v. City of Morgan Hill
Case Number: Santa Clara County Superior Court, Case No. 1-05-CV-046112
Attendees: City Manager, Interim City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Pro Tempore/Vice-Chairman Grzan opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Pro Tempore/Vice-Chairman Grzan adjourned the meeting to Closed Session at 6:12 p.m.

Council/Agency Member Sellers and Mayor/Chairman Kennedy joined the City Council/Redevelopment Agency Board in closed session.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Siegel announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

INTRODUCTIONS

Public Works Director Ashcraft introduced Ryan Klemencic, Engineering Aide.

CITY COUNCIL REPORT

Mayor Pro Tempore Grzan said that over the last couple of weeks he has had the opportunity to engage members of the community on a number of issues about Morgan Hill, and has attended a number of subcommittee meetings. He indicated that the Community Conversation is going well, with good feedback being received. He stated that some of this feedback is being posted on the City's website. He said that there will be several opportunities for the community to engage in a Community Conversation to let the Council know what direction the City might take in dealing with the \$1.5 million budget deficit while sustaining Morgan Hill. He had an opportunity to receive an update on the PL566 project, indicating that this project is at risk at this time. There have been calculations performed by the Army Corp of Engineers; suggesting that the cost benefit ratio is not aligned with the work to be performed. The project is on hold and awaiting further instructions from the Army Corp of Engineers. He indicated that the Utilities & Environment Committee is working with the Water District, as well as Congressman Pombo, who has written a letter to the Army Corp of Engineers. The letter recommends the project move forward as there will be adequate funding in the future. He stated that the Utilities & Environment Committee has been meeting, the last couple of months, to discuss various issues; including cell towers

within the community. He indicated that there is no threat associated with cell towers, and that the City would continue to monitor cell towers as applications come forward. He stated the Committee has reviewed the perchlorate discharges over the last couple of months, and was pleased to announce that there were many non-detectable readings from City wells. He stated that water in Morgan Hill is acceptable; according to state and federal standards at this time.

RECOGNITIONS

City Manager Tewes indicated that Chief of Police Cumming had been delayed in his attendance this evening; and stated that Chief Cumming sends his apology for not being able to present the Certificate of Recognition.

Mayor Kennedy presented Officer Eric Mosunic with a Certificate of Recognition, recognizing him for being the recipient of the California Highway Patrol "10851" Pin.

Assistant Chief Dwight Gooden, Highway Patrol, indicated that only 5-10% of state officers qualify for this award; indicating that this is Officer Mosunic's second 10851 Pin. He said that Officer Mosunic is well on his way to qualifying for his third pin.

CITY MANAGER REPORT

City Manager Tewes stated that every household in Morgan Hill will be receiving the second of a series of newsletter regarding the Community Conversation. He indicated that this newsletter outlines the issues facing the community, and the results of the conversations to date. He said momentum is building and interest is growing; and that there are still plenty of opportunities for community members to join in a Community Conversation. He announced the schedule of upcoming Community Conversations.

CITY ATTORNEY REPORT

Interim City Attorney Siegel indicated that this is the last Council meeting he will be attending as the City's Interim City Attorney; noting that Janet Kern will start her new position as the City Attorney next week. He felt the City would be in good shape, and that Ms. Kern will serve the Council and staff well as she is an experienced attorney. It will also be a benefit to have a city attorney on board who will be at city hall five days a week. He thanked Mayor Kennedy and the Council Members for giving him the opportunity to work for the City of Morgan Hill. He said that there would be exciting opportunities and challenges facing the community such as the budget deficit, the Community Conversation, Redevelopment Plan Amendment, etc. He thanked City staff for its tremendous assistance during his time at City Hall; especially thanking Kathi Bailey, stating that without her help the City Attorney's office could not have functioned as well as it did throughout the course of the year. He stated he would resume the role of backup to the new City Attorney. Therefore, the Council may see him a couple of times during the course of the year.

Mayor Kennedy stated the Council has been pleased and appreciative of all the work performed by Interim City Attorney Siegel and thanked him for his legal assistance.

Mayor Pro Tempore Grzan thanked Interim City Attorney Siegel for his outstanding leadership and the legal advice given to the Council. He looks forward to seeing him in the future.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-11 as follows:*

1. **INDOOR RECREATION CENTER (IRC) PROJECT – JANUARY CONSTRUCTION PROGRESS REPORT**
Action: ***Information Only.***
2. **SECOND AMENDMENT TO SAN PEDRO PONDS JOINT USE AGREEMENT**
Action: ***Approved** the Second Amendment to the Joint Use Agreement with the Santa Clara Valley Water District, Subject to City Attorney and City Manager Approval.*
3. **AGREEMENT BETWEEN CITY OF MORGAN HILL AND SANTA CLARA COUNTY FOR OBTAINING ORTHOPHOTO AERIAL PHOTOGRAPHS**
Action: ***Authorized** the City Manager, Subject to City Attorney Review and Approval, to Execute an Agreement with the County of Santa Clara for Obtaining Orthophoto Aerial Photographs of the City of Morgan Hill at a Cost of \$17,073.*
4. **CONSULTING AGREEMENT FOR SUB-REGIONAL FIRE SERVICE STUDY**
Action: ***Authorized** the City Manager to Execute Contract with Citygate Associates for the Purpose of Conducting a Study on Sub-Regional Fire Service.*
5. **RECRUITMENT EFFORTS TO FILL UPCOMING VACANCIES TO BOARDS AND COMMISSIONS, AND EXTEND TERMS OF OFFICE**
Action: *1) **Established** February 2006 as Recruitment and April 2006 to Interview/Appoint to Fill Vacancies on the Library, Culture & Arts Commission and Parks & Recreation Commission; 2) **Established** April 2006 as Recruitment and May 2006 to Interview/Appoint to Fill Vacancies on the Architectural & Site Review Board (ARB), Mobile Home Rent Commission, and Senior Advisory Commission; 3) **Directed** Staff Regarding Questions the Council would like Added to the Applications, if any; 4) **Extended** the Terms of Office for*

*Library, Culture & Arts and Parks & Recreation Commissioners until such Time the Council Concludes the Interview and Appointment Process; and 5) **Directed** the City Clerk to Notify the Commissioners of their Term Extension.*

6. **RESOLUTION OF INTENT TO VACATE A PORTION OF TAYLOR AVENUE AND SETTING TIME AND PLACE FOR THE PUBLIC HEARING**
*Action: 1) **Adopted** Resolution No. 5973, Resolution of Intent to Vacate a Portion of Taylor Avenue; Thereby Setting March 1, 2006 at 7:00 P.M. in the Council Chambers as the Time and Date for the Public Hearing; and 2) **Directed** the City Clerk to Publish the Adopted Resolution of Intent as Required by State Law.*
7. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2005 QUARTERLY REPORT #4**
*Action: **Accepted** and **Filed** Fourth Quarter Report for 2005.*
8. **ADOPT ORDINANCE NO. 1754, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1754, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1733, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP 02-06: EAST DUNNE-DEMPSEY (DELCO) ALLOWING FOR A SIX MONTH EXTENSION OF TIME FOR SUBMITTING AND OBTAINING BUILDING PERMITS FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APNS 817-11-067 & 817-11-072).***
9. **ADOPT ORDINANCE NO. 1755, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1755, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A 7.5 ACRE SITE LOCATED ON THE NORTH SIDE OF EAST CENTRAL AVENUE AT THE NORTHERLY TERMINATION OF CALLE MAZATAN. (APN 726-26-004).***
10. **ADOPT ORDINANCE NO. 1756, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1756, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-05 FOR APPLICATION MP 04-14: CENTRAL-HU (DELCO) (APN 726-26-004).***

11. **USE OF THE FLOATING DATE FOR A GENERAL PLAN AMENDMENT REQUEST INVOLVING A VACANT 2.66 ACRE PACEL ADJACENT TO AND NORTHERLY OF THE WALNUT GROVE DRIVE/LAUREL ROAD INTERSECTION**
*Action: **Directed** Staff to Utilize the Floating Date, if Necessary, for a General Plan Amendment Request Involving a 2.66 Acre Vacant Parcel Adjacent to and Northerly of the Walnut Grove Drive/Laurel Road Intersection.*

Mayor Kennedy announced that the general plan amendment relates to a Trader Joes grocery store. He stated that the Council is pleased to see this item move forward.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

***Action:** On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 12-16, as follows:*

12. **RESOLUTIONS TO AUTHORIZE THE DEPOSIT AND WITHDRAWAL OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF)**
Action:
*1. Acting as City Council, **Adopted** Resolution No. 5974, Authorizing Officers/Employees, and their Successors, to Deposit and Withdraw Monies in the Local Agency Investment Fund;*
*2. Acting as Redevelopment Agency Board, **Adopted** Resolution No. MHRA 259, Authorizing Officers/Employees, and their Successors, to Deposit and Withdraw Monies in the Local Agency Investment Fund.*
13. **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JANUARY 20, 2006**
***Action:** **Approved** as Submitted.*
14. **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JANUARY 21, 2006**
***Action:** **Approved** as Submitted.*
15. **ADJOURNED JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JANUARY 25, 2006**
***Action:** **Approved** as Submitted.*
16. **JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JANUARY 25, 2006**
***Action:** **Approved** as Submitted.*

City Council Action (Continued)

CONSENT CALENDAR:

Council Members Carr and Sellers requested that item 17 be removed from the Consent Calendar.

Council Member Carr requested that items 18 and 19 be removed from the Consent Calendar as he would be recusing himself from voting on these two items.

17. ACCEPTANCE OF PEDESTRIAN CROSSING IMPROVEMENTS AT MONTEREY ROAD AND CENTRAL AVENUE

Council Member Sellers stated that he would be recusing from participating on this item as he resides within 500 feet of the project. He excused himself from the Dais.

Council Member Carr noted that this project was the culmination of a partnership with the City of Morgan Hill and the Morgan Hill Unified School District. He said that a lot of work went into this project by staff and the City-School Liaison Committee. He indicated the City-School Liaison Committee tried to find a project that qualified under the Safe Route to Schools Grant that would provide a safe route to school for children. He thanked staff for the grant application; noting this was a successful partnership between the City and School District. It is his hope that there would be other future partnerships for the benefit of the community.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Sellers absent: 1) **Accepted** as Complete the Pedestrian Crossing Improvements at Monterey Road and Central Avenue Project in the Final Amount of \$237,882; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

Council Member Sellers resumed his seat on the Dais.

Council Member Carr stated that he would be stepping down from participating on Agenda items 18 and 19 as his home is located within 500 feet of these two items. He excused himself from the Dais.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Items 18-19 as follows:*

18. ADOPT ORDINANCE NO. 1752, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1752, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A 2.65***

ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF WRIGHT AVENUE AND HALE AVENUE. (APNs 764-32-017 & 018).

19. ADOPT ORDINANCE NO. 1753, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1753, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-07 FOR APPLICATION MP 04-27: Wright Avenue - Dividend (APN 764-32-017 & 018).

Council Member Carr resumed his seat on the Dais.

City Council Action

PUBLIC HEARINGS:

**20. DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-11: SAN PEDRO-DICONZA
– *Ordinance No. 1757, New Series***

Director of Community Development Molloy Previsich presented the staff report on a request to amend a development agreement for a 32-unit development to incorporate changes in the schedule and the process to construct a third below market rate unit.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1757, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council Introduced Ordinance No. 1757, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE SCHEDULE AND PROCESS TO CONSTRUCT THE 3RD BMR UNIT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

21. ZONING AMENDMENT, ZAA-98-01: EAST DUNNE-SHAW – *Ordinance No. 1758, New Series*

Director of Community Development Molloy Previsich presented the staff report for a request to amend a precise development plan to allow for a shared use of a 32 square foot monument sign to be located on

the southeast corner of the intersection of East Dunne Avenue and San Benacio Way. She informed the Council that the application was reviewed by the Planning Commission and that on a 6-1 vote; they recommend Council approval of the amendment. The one Commissioner dissenting was not in opposition to the monument sign, but stated their support of a smaller monument sign. She indicated that the size of the monument sign would be comparable to other monument signs and that the monument sign would be 4 feet tall by 8 feet wide (32 square foot sign).

Mayor Kennedy opened the public hearing.

Bill Shaw, applicant, indicated that he purchased the property in 1998 with the thought of placing a mini storage facility along Dunne Avenue for its visibility. He informed the Council that this mini storage facility has 450 units with an estimation of 20 individuals moving in and out every month. He informed the Council that the Tudor Time/The Children's Garden day care center is doing well. When the project was completed in 2000, he thought planning staff understood that the sign to be located at the corner would be the shared sign for the mini storage as part of the PUD. However, it was not clear to planning staff that this was the case and signage was denied. He indicated that the mini storage has been struggling ever since the adjacent housing project was built. He requested Council support of the monument sign. He confirmed that the monument sign would be 4' x 8'; a low profile sign. He felt the sign would be smaller than other monument signs in the community.

No further comments being offered, the public hearing was closed.

Council Member Sellers declared that he has not had the opportunity to talk to the project proponent, but that the project proponent did try to contact him. He indicated that the supplemental information provided prior to the meeting was helpful. He felt the signage was appropriate.

Council Member Carr stated that he spoke to Mr. Shaw.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1758, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1758, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING A PRECISE DEVELOPMENT PLAN TO ALLOW FOR THE SHARED USE OF A 32 SQUARE FOOT MONUMENT SIGN TO BE LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST DUNNE AVENUE AND SAN BENANCIO WAY (APN 817-11-013), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

22. ZONING AMENDMENT, ZA-05-13/ DEVELOPMENT AGREEMENT DA-05-12: SAN PEDRO-AHMADI – Ordinance Nos. 1759 and 1760, New Series

Director of Community Development Molloy Previsich presented the staff report for a request to approve a zoning amendment to establish an R-2, 3,500/Residential Planned Development on a .298 acre site located on the south side of San Pedro Avenue, at the easterly corner of Cory Lane.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1759, New Series (Zoning Amendment).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1759, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A .298 ACRE SITE LOCATED ON THE SOUTH SIDE OF SAN PEDRO AVENUE, AT THE EASTERLY CORNER OF CORY LANE (APN 817-59-052)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1760, New Series (Development Agreement).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1760, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 05-12 SAN PEDRO-AHMADI FOR APPLICATION MMC-04-06: SAN PEDRO-AHMADI (APN 817-59-052)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

City Council Action

OTHER BUSINESS:

23. INDOOR RECREATION CENTER (IRC) MARKET STUDY AND OPERATING MODEL

Council Member Carr indicated that the Public Safety & Community Services Committee (Committee) was tasked to look at an operational model for the IRC. Tonight's presentation is the culmination of several people's efforts, including staff, the Committee and others. He indicated that Council Member Tate would lead the presentation from the Committee on how it examined the partnership model. He stated that YMCA representatives would be making a presentation as well.

Assistant to the City Manager Dile addressed the operational model to be used at the IRC as the City prepares for the grand opening this fall. She indicated that Interim Recreation and Community Services Manager Cooper and she would be presenting the staff report. She addressed Council objectives as part of the Visioning Process for the proposed extension of the Redevelopment Plan. She addressed the actions taken to date; indicating that the City and YMCA staff met for over a year in order to try to meet the Council's objectives.

Interim Recreation and Community Services Manager Cooper said that for the past five months, he has worked with the YMCA toward a partnership model. The model addressed community access. He indicated that the results from the study show good community access. The model allows for "drop ins" as well as "pass" users. He stated that cost recovery would be achieved in the third year. As far as City control is concerned; the City would have final say on all issues should good faith efforts not be demonstrated. He said the model is unique in that there will be two operators. He stated that good faith efforts are needed to achieve the Council's goal of providing a good facility to the community. There is a difference between a YMCA partnership model and city model. He indicated that there would be cost savings to the City should the YMCA take over the senior nutrition program. He addressed the policy tradeoffs that may impact cost recovery with drop ins. He felt the proposal to be reasonably affordable, provides good accessibility, has a good chance of breaking even in the third year, and gives City authority to resolve disputes. He indicated that the IRC is proposed to open in September 2006.

Council Member Tate stated that the Council and the Committee have worked on the IRC model for a long time. Staff has supported the Council's efforts and stated the Committee's appreciation of staff support. He noted the Council identified a goal of adopting an operational model for the IRC. He indicated that a partnership contract would return to the Council for approval. He said that Council Member Carr has been aligned with the YMCA as a former board member. He is a member and is aligned with the YMCA's developmental assets. He indicated that the YMCA is aligned with the City. He addressed the analysis of the partnership model. He stated that management needs to be resolved, should the City move forward with the partnership model. He addressed the risks and benefits associated with each model. He stated the Committee hopes that the YMCA would be able to supplement fees for low income individuals. He presented an operational cost comparison. He said the Committee recommends the City negotiate a partnership, with objectives, as this model ensures that the risk is shared. As owners of the facility, the City has ultimate authority, including hiring a manager. He addressed scholarships associated with the use of the facility. The Committee recommends a five-year contract term with items to be negotiated in partnership in terms of measurements. It is proposed that the YMCA would continue the senior nutrition program. He noted that the YMCA partnership model heads toward cost recovery in year three.

Jan Hagemann, Board Manager for Mount Madonna YMCA, indicated that this is a local branch led by local board managers. She stated that the YMCA is looking forward to a partnership; a win win partnership in building a stronger and healthier community. She indicated that the YMCA is good in delivering healthcare and fitness services to build strong families. She addressed the YMCA-values, noting that they have been in Morgan Hill for the past 20 years.

Dave Thornton, CEO for YMCA, stated that the Mt. Madonna YMCA is 1 of 7 in the association. He thanked Ms. Hagemann and members of the Board for their outstanding contributions to the community. He also thanked City staff for their assistance and to Council Members Carr and Tate for their involvement in the culmination of the proposal being presented this evening. He has enthusiasm for this partnership model, understanding that there are details to be worked out. The proposal will create a win for the City, the YMCA and the citizens of Morgan Hill. He assured the Council that the full resources of the organization would be used to make this partnership successful. He addressed the positives the YMCA organization would bring to this partnership: 1) core competency, including entrepreneurial skills in marketing and income generation; 2) YMCA has long term successes in providing health and fitness on a cost recovery basis; 3) brings into this effort their reputation; 4) brings along the larger YMCA organization that will allow Morgan Hill citizens to have free memberships to all YMCA facilities across the country; and 5) the partnership will result in accessibility. He stated that the mutual success is dependent upon both parties engaging in the partnership in collaboration. He said that the YMCA is committed to this partnership.

Council Member Carr indicated that it is the Committee's recommendation that the Council direct staff to negotiate a YMCA Partnership model contract.

Council Member Grzan indicated that in the presentation and in the survey conducted, staff looked at cost information. He noted the cost information presented considered City staff rates and noted that the YMCA staff rates were lower. He inquired whether the outcome of the survey would have been different if staff rates were the same.

Mr. Cooper indicated that the YMCA's salaries are lower than what the City would pay its employees. Staff presented the budget information according to what the YMCA pays its employees at the present time. He clarified the City could not pay the YMCA rates as the City has established rates. If the rates were the same, the two models would be the same or close, except for the senior nutrition program component that the YMCA would continue to operate based the funding source.

Mayor Kennedy referred to the senior nutrition program. He said it was his understanding the County would continue to fund the senior nutrition program as an existing program, should the YMCA or a non profit organization continue to operate the program.

Mr. Cooper noted that the YMCA is the current provider of the senior nutrition program. Should the YMCA organization transfer over to the IRC facility and continues to provide a transitional program; the County has indicated a match would not be necessary for this service. However, should the City take over the nutrition program, the County would consider the program at a new site, and that the County would require a 50% match. Therefore, it would be 50% cheaper for the YMCA to continue to operate the senior nutrition program. He indicated the YMCA is not excited about being the provider of the senior nutrition program as the program is paperwork intensive. He informed the Council that the past provider stopped this program because they could not handle the extra overhead. With the \$75,000 given by the City to the existing facility, some of this funding has been applied to cover some of the overhead. Therefore, City assistance would need to continue in order for the YMCA to continue being the provider of the nutrition program. Otherwise, it would not be cost affective for the YMCA to

continue to be the provider. Should the program continue, as it stands today, the City would not need to pay 50% of the costs.

Mayor Kennedy inquired as to the basis for a 5-year contract. Can this be structured as a 2-3 year contract? He inquired whether consideration was given to a release from the contract should a problem occur to either party, within a reasonable period of time.

Mr. Cooper indicated that the proposal calls for a 5-year term with a City option to continue the contract for 5 years, if so desired. It was contemplated that 5-years would be the term that would allow everyone to become comfortable with each other, and that both parties would be able to decide whether the contract should be continued at the end of the 5-year term. He felt a 5-year contract was a reasonable time period to make everything work appropriately. He informed the Council that a release clause in the contract would be possible, if so desired by the Council.

Mayor Pro Tempore Grzan referred to the numbers used in the survey of 455 users. He inquired how much of these numbers were unduplicated counts.

Mr. Cooper clarified that the 455 number is the total user count.

Mayor Pro Tempore Grzan noted that staff indicated that the project would break even in the third year. However, staff did not mention the loss to occur in years 1-3.

Mr. Cooper said the loss would depend on the model adopted by the Council. He felt the City would have a better chance of breaking even sooner by using the YMCA partnership model based on the abilities they already have built in. He said there are a lot of variables involved in terms of when the City moves forward and the model chosen.

Mayor Pro Tempore Grzan said that a few years ago, several studies were conducted. One was a City only operational model. He noted staff did not consider this model in this particular process. He inquired whether there would be an advantage to Morgan Hill residents with a different type model.

Mr. Cooper stated that it was his charge to see if he could bring the YMCA and the City together in a hybrid model that made sense. He felt that he has done so, indicating that he did not spend much time dealing with what happened in the past, in terms of the models studied. He looked at the numbers in terms of visits. He indicated that the total visitor numbers were approximately the same as the prior Sports Management Group City model. He said that a lot of other cities are proceeding with a city model, indicating that this is the more traditional model. The \$7 drop in fees proposed is at the upper end of the fees charged by other cities. However, the drop in fees varies, in terms of how much subsidies cities are willing to pay, or depending on how much cost recovery is desired.

Mayor Kennedy noted that a city model opens the facility to all members of the public. He understands the YMCA perspectives that they never turn anyone away, and that they have scholarships available. He expressed concern that there may be some individuals that would not use the facility without some outreach that would be seen in a city run model.

Mr. Cooper said that this is the tradeoff that staff is dealing with in terms of cost recovery. If the overriding issue is 100% cost recovery, he felt the City needs to move toward an annual pass model in order to provide the revenue needed to meet 100% cost recovery. Should the City go the other way, the lower priced drop in pass would dramatically affect the number of individuals who would buy the annual pass as you lower the drop in rates. Doing so, would dilute the ability of the money generator, the annual pass, to move the City forward. He felt the total user numbers would be the same, in terms of all models, as being over 400,000 total user visits. It was his belief that this model provides a good opportunity for the vast majority of Morgan Hill residents. There is also a \$60,000 scholarship fund built into the budget, regardless of whether it is to be a City or YMCA model. The \$60,000 would come through revenues generated from the facility (self generating). The model proposes to have a reasonable day pass and have an affordable/accessibility number, as well as having additional accessibility for individuals who cannot afford the day pass.

Council Member Carr indicated that accessibility was an issue reviewed by the Committee. The Committee found that by looking at a partnership model, it does not limit accessibility from any other model that could have been considered. He noted the City would be adding access to the facility that would not have occurred had staff not added the scholarship line item to the budget. He suggested the Council think about a scholarship line item for other facilities as well.

Mayor Pro Tempore Grzan said that in looking at the previous studies conducted years ago and in looking at alternatives A, B, and C, in each case, it shows the City operating in a positive cash flow. He inquired whether there was a different model that could be developed that could lower the rates that would make the facility affordable to Morgan Hill residents.

Mr. Cooper responded that he did not know of another model that would lower the rates for Morgan Hill residents. He felt the best chance the City has to becoming self sustaining would be a model that relies more on annual passes versus day rates. Should the Council desire not to maximize cost recovery, and is willing to provide some subsidy; he felt there is a model that would accommodate lower rates to operate the facility. He felt this was a good model, and that he would recommend this as a model that would be successful. He noted the YMCA has the experience of being 100% cost recovery in their facilities, and would give the City the opportunity to tie into this expertise; giving the City a good chance of being self sustaining at the end of three years. It was his belief the City could assemble the same expertise, but not as fast as the YMCA. He felt it would take the City a little longer to achieve the 100% cost recovery because the City would be starting from ground zero. He stated that the YMCA would infuse the center with their expertise almost immediately and that it would take the City longer to get to where the YMCA is at this time. He noted the City does not have individuals to staff the IRC facility, where the YMCA has the commitment for full resources to get the center up and running. They also have the expertise in opening facilities of this type. This would provide the City with the ability to get closer to cost recovery sooner than the City would have, otherwise.

Council Member Sellers noted that one of the challenges faced with the aquatics center was that the City started from scratch with every staff member. The Council also saw the challenges that existing staff had

in undertaking the aquatics facility. Therefore, the Council already experienced the opening of a City operated facility.

Mayor Pro Tempore Grzan inquired as to current YMCA memberships in Morgan Hill.

Debbie Cupp indicated that there are approximately 200 facility members who pay annual passes. The YMCA also has just over 2,000 basic members who pay an annual fee of \$25 and participate in YMCA programs. Approximately 95% of these numbers would be Morgan Hill residents. This proposal is based on survey results, and that the survey anticipates 23% participation from outside the Morgan Hill area and that 77% would be from Morgan Hill. It would be YMCA's goal to get as many Morgan Hill residents to use the facility. However, in order to achieve full cost recovery, the facility would need to attract individuals from the surrounding areas to reach the numbers needed.

Special Assistant to the City Manager Spier informed the Council that the Sports Management Group study indicated that 71% of Morgan Hill residents would use the indoor recreation center.

Mayor Pro Tempore Grzan inquired whether the YMCA would be agreeable to a stipulation in the agreement that either side, with or without cause and with a one year written notice, can terminate the agreement.

Council Member Carr felt it important that the Council keeps its discussion and questions at a policy level, and that the Council not negotiate over the dais.

Mayor Kennedy opened the floor to public comment.

Walter Von Tagen indicated that a few years ago, he stated that it was his belief the YMCA was the organization in town to run the indoor recreation center. He is before the Council this evening to once again state the YMCA is the organization in town that should run the indoor recreation center. He applauded the Council for directing the report presented this evening. He commended the Committee for its recommendation. He noted the City is facing five years of deficit spending and that the aquatics center and community center have not yet shown a profit. He felt it to be fiscally prudent, at this time, or at least the next five years, to allow the YMCA to operate the indoor recreation center and use their resources/history in running similar centers, and to use their nationwide network to operate the center.

No further comments were offered.

Mayor Pro Tempore Grzan expressed concern with the timeline brought before the Council. He indicated that he has had a short period of time to review the information/models presented. He expressed concern that the Parks & Recreation Commission, appointed by the Council to oversee parks and recreation activities, was not a part of the presentation, nor given this information. He felt it important to have this Commission review the information as they have a vested interest in Morgan Hill recreation with deep ties within the sports community and youth sports activity; as well as with the senior groups. He would like to receive their comments/views on this particular proposal and the fees suggested. He would like to give the Commission the opportunity to review the proposed partnership

model as this would be a significant step for the community. He felt the Commission was instrumental in providing the Council with guidance and information. He inquired whether there was time, in the process, to send the partnership model to the Commission for their review and comment.

Council Member Tate noted that the Public Safety & Community Services Committee was charged to review the partnership model without being referred to the Parks & Recreation Commission in order to meet the timeline to get this facility on line as quickly as possible. He did not see any reason to revisit a decision made a long time ago.

Council Member Carr noted that the Council has identified a goal of today's date for making a decision on the operational model for the indoor recreation center. The Council would be meeting this goal by making a decision this evening.

Council Member Sellers disclosed that he made a minor contribution to the YMCA. The last time the issue was before the Council with a YMCA model, he did not support the YMCA operating the entire facility. He felt it important the City have a degree of control of this multi million dollar facility. He said that his concerns have been satisfied this evening based on the deal points agreed upon by the YMCA and the City, as presented this evening. He felt the City was achieving its goals, noting the City would have control in hiring. He said that when you talk about cost recovery, you need to look at business models and how they work. He did not believe money would be made in the first year and that the City would be better off by adding partners, particularly when the partners bring in expertise not in place. He said these two items impressed him when it comes to cost recovery. The City's marketing opportunities can be expanded through the YMCA organization. He felt there were a few items the City needs to be cognizant about as the City moves forward. He said that it makes sense to continue with the senior nutrition program in this model. He recommended the senior center be monitored in terms of quality and programming to be provided at the new facility. He would like to know the types of expansions that can be achieved, in terms of access to this facility. It would be important to monitor usage of the facility. He noted that this is a youth and senior facility first and foremost. He wanted to make sure youths have access to the facility and feel comfortable using the recreational facilities, regardless of their family's ability to pay. If the City is careful in its approach, the City can enhance its ability to provide services to youth and individuals who may not have otherwise taken advantage of the facility due to lack of resources, and who were not comfortable approaching the facility. He was encouraged by what he has seen/heard this evening, and with the agreement put together as it has met his concerns. He felt the partnership model would do much more than the City could do on its own.

Mayor Pro Tempore Grzan requested more information about sharing of risks/profits.

Council Member Carr responded that the Committee laid out an objective that staff needs to return to the Council with a contract that shares the risk. However, the details of the risk such as percentages, when, and/or how much, were not items dealt with in the discussions in the policy of this matter.

Mayor Pro Tempore Grzan said that he needs to have additional information. He would like to know what the risks are.

Mr. Cooper said that staff has had fairly extensive conversations about risk. He said the YMCA is prepared to share 35% of the risk and 35% of the profits.

Mayor Pro Tempore Grzan said that he comes from the “old school” where recreation was affordable; where families and children paid a nominal fee for the use of public recreational facilities. He noted that society has moved differently, especially in Morgan Hill. He noted Morgan Hill has created recreational programs that have added to the deficit of the City. He felt the \$1.5 million could be directly attributed to the City’s new recreational programs. He stated it would be his preference for a city model, and felt the citizens in the community would like to see an affordable city program built with city dollars. If the City does not resolve the budget deficit, the City may be looking at laying off public safety officers and reducing core/level of services the community has become accustomed to. He was still not sure about this partnership model, and that he would be looking for more information such as figures, specifics, details, what the agreement would look like, etc. It was his belief this information would come to the Council, in the future should it agree to move forward with the partnership model. He noted the Parks and Recreation Commission did not want the City to move in this direction when given the opportunity to review this issue years ago. It was his belief that many Commissioners may still have a preference for a city model. He felt pressured in making a decision this evening without benefit of speaking to Parks & Recreation Commissioners and/or other members in the community regarding the model before the Council. It was his hope that someday, the City would be able to return to a City model. It would have been his preference that some of RDA dollars would have gone into building an infrastructure to increase the City’s revenue stream in order to build facilities, and sustain them at rates affordable to families in Morgan Hill. He expressed concern that even though the survey indicates there would be a significant number of individuals willing to pay \$1,100 per year for an annual pass for core services; he was concerned with the \$7 drop-in rate for a youth or anyone else, that they may find it to be prohibitive and exclusive. He acknowledged the City would be offering \$60,000 in scholarships, but felt there were individuals on the border line who would not ask for the scholarships, and not be able to pay the higher fees. He recommended the City carefully monitor the fees and numbers to make sure the City is not excluding Morgan Hill residents from participating in recreational facilities/services they have paid for.

Mayor Kennedy stated that his experience with the YMCA is that they are a wonderful non profit service provider and that he has used their programs. He has been involved with the Cornerstone Project along with Council Member Tate. He said the issue is not about the YMCA, but about the indoor recreation center. He disclosed that he met with Debbie Cupp and Crickett Rubino. He also spoke with several members of the Parks & Recreation Commission in order to hear both sides of the issue. In a perfect world, he felt a city run model, with a role for the YMCA, would be the best program. However, in light of the City’s difficult budget situation, he felt it made sense to proceed with a YMCA partnership model. However, he would like to keep open the ability for the City to be able to operate all programs when it made sense to do so. He felt the City needs to move forward with the indoor recreation center-YMCA partnership model; protecting the City for future options and ability to get out of the agreement with proper notice. He would like to ensure that the risks and profits are being shared in a true partnership. He thanked the YMCA for their many years of work in the community, the Committee and staff for working many long hours, and the Parks & Recreation Commission for working on this issue.

Council Member Carr thanked the Council for entrusting the Committee with the ability to work on the model for the indoor recreation center. He said the Committee had the ability to look at the different models; spending time with YMCA staff. He thanked staff for putting in countless hours and coming up with a positive approach. He said that several individuals reached out to him and expressed their opinions. He thanked Council Member Tate who spent a lot of time with him in going through this process, and for challenging the assumptions being made. He said the Committee's recommendation is not a reflection of the City's ability to operate the facility. He felt the partnership would have a better chance of succeeding versus either entity operating the facility on their own. He acknowledged that relationships and partnerships can be difficult. However, if both sides are committed to the goals to be set at the beginning, he felt that successes can be achieved. He acknowledged there are a lot of details to be determined, and that the Council will be asking City staff and YMCA staff to work on the details within the parameters to be given this evening. The contract is to return to the Council to make this partnership a success, and make the indoor recreation center the facility the Council wants it to be for the citizens of Morgan Hill.

Action: *Council Member Carr made a motion, seconded by Council Member Sellers to: 1) **Receive** the Results of the Market Study on Possible Partnership Operating Model for the Indoor Recreation Center; and 2) **Direct** Staff to negotiate a partnership with the YMCA to jointly operate the IRC based upon the model, as presented this evening, and the parameters as suggested by the Council's subcommittee on risk sharing; City maintaining ultimate authority, financial support from the YMCA; and a five-year term that includes measurements and evaluation. The YMCA is to continue to operate the senior nutrition program with annual renegotiations. The City is to achieve cost recovery by year three. The contract is to return to the City Council for final consideration by the third meeting in March 2006.*

Mayor Kennedy offered a friendly amendment to the motion to include a provision in the five year term that would allow the City or the YMCA flexibility to withdraw from the agreement based on certain parameters agreed upon.

Council Member Carr said that in the discussion he and Council Member Tate had about this issue, it is felt that this would be inherent within the model in the five year period. He would expect that staff would include a termination clause in the contract agreement.

Mayor Pro Tempore Grzan inquired whether the Parks & Recreation Commission would become involved, at some point, should the action be approved this evening.

Mr. Cooper informed the Council that the Parks & Recreation Commission will be meeting next week at which time he would present them with this model and what the Council has decided. He would request their input for a second time.

Council Member Tate said that decisions need to be made based on the information before the Council. In looking at all factors presented, it seems overwhelming to him that the partnership approach is relying on expertise that exists within the community today. He agreed the City could hire the expertise needed

to move forward, but felt there is a lot of risk and delay in this approach. He noted that cost recovery has become a big factor because of the budget problems the City is facing. He felt that this is the prudent way to go. He did not believe a termination clause was needed as the partnership would work well. However, it does not mean you should not have the ability to get out of an agreement, if necessary. He supported proceeding with the best model and moving forward.

Council Member Sellers felt the Council needs to stop perpetuating the notion that the City's recreation facilities are the cause of the City's deficit. He noted that all models indicated it would take three years to reach a break even situation, noting that this is only year two for the community center. He indicated that the Council made a conscious decision to accommodate as many youth in the community as possible. In order to do so, the Council had to structure the rates lower than what was recommended. If anyone wants to state the City needs to achieve cost recovery for the aquatics center, they need to come before the Council and state that the City should not serve the poorest kids in the community. He felt the Council needs to monitor the indoor recreation center, and remember that it is here to serve the community in the best way possible.

Mayor Pro Tempore Grzan stated that he would agree to move forward in approving the partnership model this evening; conditioned upon the final detailed agreement coming before the Council. He wants to see the details in order to ensure the interests of Morgan Hill are protected and satisfied.

Mayor Kennedy felt this was a wonderful time for celebration as the indoor recreation center is moving forward; providing much needed services to the community.

Vote: *The motion carried unanimously (5-0).*

24. IMPACT FEE ORDINANCE AND RESOLUTIONS – *Ordinance No. 1761, New Series; and Resolution Nos. 5975 and 5976*

Business Assistance and Housing Services Manager Maskell presented the staff report, indicating that staff has brought before the Council an impact fee ordinance and resolutions for its consideration that would address economic development inhibitors that: 1) revise the City's traffic-sewer financing program to make it more attractive to perspective users; 2) to change the current policy to allow non residential developers to lock impact fees for six months upon the submittal of a completed building permit plan check application; and 3) a developer fee deferral program for utility underground in lieu fees.

Mayor Kennedy opened the floor to public comment.

Dan Ehrler expressed the Chamber of Commerce's sincere appreciation to staff and the Community & Economic Development Committee for addressing the economic development inhibitors, and bringing the recommended actions forward this evening. The Chamber of Commerce is encouraged, pleased, and grateful that this item is before the Council this evening as it is a step in the right direction. He stated that the Chamber looks forward to continuing the conversation; returning to the Council with additional recommendations through this process.

No further comments were offered.

Council Member Sellers thanked staff for taking the initiative to undertake this item and bringing it forth. He also thanked the Chamber for agreeing to undertake the review and the extra steps required. He felt this has been a good collaborative process and that it continues to move the City in the right direction.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1761, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1761, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.56 [DEVELOPMENT IMPACT MITIGATION FEES] OF TITLE 3 [REVENUE AND FINANCE] BY ADDING SECTION 3.56.065 [EXEMPTION FROM FEE INCREASE] AND SECTION 3.56.095 [DEFERRAL OF PAYMENT OF SEWER AND TRAFFIC IMPACT FEES]; AMENDING CHAPTER 12.02 [STREET AND SIDEWALK DEVELOPMENT] OF TITLE 12 [STREETS, SIDEWALKS, AND PUBLIC PLACES] BY ADDING SECTION 12.02.115 [DEFERRAL OF UNDERGROUND UTILITY IN LIEU FEE]; AND REPEALING CHAPTER 3.44 [DEVELOPMENT IMPACT FEES] OF TITLE 3 [REVENUE AND FINANCE]**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5975, Establishing a Revised City Deferral Program for Traffic, Sewer and Utility Undergrounding In-Lieu Impact Fees.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5976, Authorizing Applicants of Building Permits Submitted After July 1, 2005, but not yet issued, to take Advantage of Section 3.56.065 (Exemption from Fee Increase) Established by the Ordinance (Actions 1 and 2, above); and to Participate in the Revised City Deferral Program set forth by the Resolution in Action 3, above.*

City Manager Tewes said that by Council action, the Council has made it easier for staff to work with potential developers in assisting in what is considered significant cost to development impact fees. He informed the Council that many cities throughout the County and throughout the State have a comprehensive development impact fee system that is authorized by State law. The City's general plan states that the City needs to charge new development the cost of their impacts on the existing community to ensure that growth does not adversely affect the existing community. He acknowledged that impact fees increase the costs of development that affects the real estate market and has the

tendency to discourage certain types of development. He distributed to the Council staff's annual study where staff compares the impact fees the City of Morgan Hill charges with other cities in South County. He reported that notwithstanding the City's policy to require that new development fully mitigate its impacts, the City still has rates that are significantly lower than other communities in South County. He stated that staff is aware of the impacts associated with the impact fees on the incentive to develop in the community, while maintaining the policy goal of ensuring that new growth pays for itself.

25. KIDDY ACADEMY IMPACT FEE AGREEMENT AND DEFERRAL

Business Assistance and Housing Services Manager Maskell indicated that in February 2005, the Council authorized the City Manager to prepare an agreement with the owners of the Kiddy Academy building to be constructed at 15750 Monterey Road to allow the traffic impact fees to be calculated based on the number of children in the proposed childcare center. The fees were originally to be calculated based on the initial state license to be issued to the business. The assumption was that there would be approximately 70 children that would be cared for at the childcare center. She informed the Council that the agreement also required the building owner to pay additional fees for additional children beyond the initial start up phase. She indicated the state issues a license to a business based on the number of children that occupy the building. This can be up to 128 children, not 70 children. She indicated that the property owners and the operators of the Kiddy Academy are requesting the City remove the state license language from the impact fee agreement, and that the City base the initial fees on 84 children; the number of children they believe would be accommodated by the business. Staff is recommending that they be directed to develop a monitoring program to make sure that should there be additional children in the future, that the property owner or Kiddy Academy pay for the additional children in traffic impact fees.

Mayor Pro Tempore Grzan inquired if a precedent would be set by proceeding with staff's recommended action.

Ms. Maskell said that the traffic impact fee is an extraordinary high fee for a daycare. She did not believe there has been a new daycare center established since the last fee increase. She said that typically, staff calculates fees on building square footage. She acknowledged that traffic fees have not been based on this model, but staff felt this was an extraordinary situation.

Interim City Attorney Siegel said that there are two different ways to look at this situation. One is in the technical legal sense and whether someone can take the City to court requesting the same consideration. He noted the Council is looking at these specific circumstances and should the majority of the Council find this is a unique situation, a court would uphold the Council's decision. He also felt it would be unlikely the matter would ever get to court. He said that the use of the term "precedent" is used differently in terms of individuals stating the Council is not acting fairly. As a matter of policy, the Council may be creating a precedent. However, the Council is not taking an action that would be legally binding on this Council or any future councils.

Ms. Maskell noted the City has taken a similar action with sewer impact fees a number of years ago where public works monitored sewer impacts, and a company was charged accordingly. She informed

the Council that Kiddy Academy would like to participate on the recently adopted Impact Fee Deferral Program. She indicated that the deferral of the fees would be secured on real property.

Interim City Attorney Siegel said that the Impact Fee Deferral program just passed by the Council requires security be approved by the City's Risk Manager as well the City Attorney's Office.

Mayor Kennedy opened the floor to public comment.

Rose Chan, owner of Kiddy Academy Child Care Learning Center, thanked staff for their assistance on this issue. She felt the business provides good care and educational services to the children in the community. She said that she was surprised to receive the calculation of \$200,000 in traffic impact fees. This is a high amount of money to pay to start a small business. She indicated that the cost for the project is approximately \$800,000 and that adding \$200,000 to the use would result in a \$1 million project. She would need to charge parents more to offset the costs of the \$200,000 traffic impact fee; a disadvantage to new business and the community of Morgan Hill. She requested the Council reduce traffic impact fees and allow the deferral of the impact fees.

Ms. Maskell clarified that Ms. Chan would be paying impact fees based on 84 children. Staff would monitor the business. Should the business accommodate additional children, she would pay the incremental difference.

No further comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to Modify the Terms of the Impact Fee Agreement for 15750 Monterey Road/Kiddy Academy to Base the Traffic Impact Fees on 84 Children.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the Business Owners of the Kiddy Academy to Participate in the City's New Impact Fee Deferral Program, with Total Impact Fees Not to Exceed \$138,166.*

Redevelopment Agency Action

OTHER BUSINESS:

26. DISCLOSURE OF PROPERTY OWNERSHIP OR INTEREST BY REDEVELOPMENT AGENCY BOARD MEMBERS – Resolution No. MHRA-260

Agency Members Carr and Sellers excused themselves from participating on this item.

Interim Agency Counsel Siegel presented the staff report, indicating that Agency Members Carr and Sellers own property located within the Redevelopment Agency. He indicated that both own primary

residences within the Redevelopment Agency boundary; the only property they own within the boundary. He said that this is not an uncommon occurrence in Morgan Hill as a large number of residents live within the boundary. Assuming that the remaining members of the Agency find these disclosures acceptable, the Agency Board would make a motion to accept the disclosures and place them in the public record. At that time, Agency Member Sellers can return to the dais to participate in the consideration and vote on the second action, which is the consideration of the resolution attached to the staff report. As Agency Member Carr purchased his property in the Redevelopment Agency boundary after he was elected, there need to be findings made consistent with Redevelopment Agency law that stipulate that his property is in good shape, similar to other properties, and is not in need of Redevelopment Agency assistance. Assuming that the disclosures are accepted and the resolution is passed, Agency Members Carr and Sellers can rejoin the Agency Board and vote on item 27, a Redevelopment Agency action that would authorize the preparation of a second amendment to the Redevelopment Plan.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Grzan, the Agency Board, on a 3-0 vote with Agency Members Carr and Sellers absent, **Accepted** Disclosure of Property Interest Statements from Agency Members Carr and Sellers.*

Agency Member Sellers resumed his seat on the Dais.

Action: *On a motion by Agency Member Grzan and seconded by Agency Member Tate, the Agency Board, on a 4-0 vote with Agency Member Carr absent, **Adopted** Resolution MHRA-260, Certifying that No Work Needs to be done on Agency Member Carr's Residence.*

Agency Member Carr resumed his seat on the Dais.

27. REDEVELOPMENT PLAN AMENDMENT CONSULTANT

Business Assistance and Housing Services Manager Maskell presented the staff report on a request to contract with a consultant to amend the Ojo de Agua Community Development Project Area Plan. She informed the Council that the firm RFG prepared the preliminary study for the Agency to get to this point and that staff is recommending this firm be awarded the contract as their proposal fits more closely to what the City is looking for (e.g., conduct redevelopment agency workshops; community outreach; preparing notices, documents and reports required to amend the plan; look at blight within the community; conduct environmental review, including an environmental impact report (EIR); look at the financial implications, analyze different tax scenarios, etc.). She identified the timeline to proceed and costs associated with a plan amendment; including the addition of territory.

Chairman Kennedy opened the floor to public comment.

Marby Lee expressed concern with the state of affairs of the City and its budget problems. There are discussions underway to determine if additional fees are needed in order to maintain city services. Now the City is considering spending \$¼ million to pay a consultant to plan an amendment. She felt the public deserves justification for spending this amount of money when the City has such a crisis that city services may need to be cut. The City is talking to the community about increasing taxes in order to avoid service reductions. She felt that tax payers deserve an explanation and justification on why the City should pay this amount of money to a consultant.

No further comments were offered.

Executive Director Tewes said that City government is a large enterprise that includes many services. Most of the discussions to date have been about the City's general fund; the funds that provide basic city services [e.g., police and fire protection (81%), street & park maintenance, recreation]. This is the subject for the Community Conversation where the City's basic services are costing more than revenues available. He indicated that the Redevelopment Agency is a special state authorized agency that has the responsibility of eliminating blighted conditions in communities that inhibit private investments. He stated that in the 1980s, the City of Morgan Hill established a Redevelopment Agency in order to make the major investments seen today. He said that the Redevelopment Agency has assisted in the attraction of new businesses to the community that are spinning off tax benefits that help support the general fund. The Redevelopment Agency has made major investments in the downtown, including the establishment of the medians and a series of other improvements. He said the Redevelopment Agency has allowed the City to build important new public facilities that includes the Community & Cultural Center, and new streets and roads. It is a source of capital funds that can meet the community's needs, while addressing the blighting conditions of the community. He noted that the Redevelopment Agency will expire (ability to generate income) in January 2008 unless the Plan is amended. If the Plan is amended, there is an opportunity to gain, on average, approximately \$30 million annually in capital funds and funds to provide housing assistance to persons of low and moderate income in the community. The opportunity for a Plan amendment needs to be pursued in order to meet the significant needs in the community. He said there is no question that \$¼ million is a significant amount of money and that approximately \$78,000 of this cost is for conducting the environmental impact report. It is true that redevelopment is highly legalized, and under a lot of scrutiny. He stated that the City must follow a series of difficult procedural steps and make certain findings based on reports and facts that must be gathered throughout the process; having a series of check points with community input along the way. He acknowledged that this process is costly, but the benefits, if approved, are so significant that the investment of \$¼ million to amend the Redevelopment Plan for the opportunity to generate \$30 million annually for 10+ years is one that staff is prepared to recommend to the Council this evening. He clarified that the expense under this item is one of the Redevelopment Agency and not of the City's general fund. Therefore, these funds would not be taking away from resources that would otherwise go toward paying for core municipal services.

Agency Member Tate noted that under a separate item considered this evening, the Agency/City Council will be allowed to conduct business three times per month. He recommended that at the beginning of each agenda item, it be stated that the item is either a Redevelopment Agency or City Council item.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Grzan, the Agency Board unanimously (5-0) **Authorized** the Executive Director to Execute a Contract with GRC Redevelopment Consultants, Inc., in an Amount not to Exceed \$250,800 to Perform all Work Necessary to Prepare the Second Amendment to the Redevelopment Plan for the Ojo de Agua Community Development Project Area, Subject to Agency General Counsel Approval.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

28. AMENDMENT TO TITLE 2, SECTION 2.04.010 OF THE MORGAN HILL MUNICIPAL CODE AND AMENDMENT TO THE AMENDED AND RESTATED BYLAWS OF THE REDEVELOPMENT AGENCY, ESTABLISHING REGULAR MEETING DATES – Ordinance No. 1762, New Series

Interim City Attorney Siegel presented the staff report; indicating that as part of the goal setting session, the City Council and Redevelopment Agency indicated its interest in standardizing when and how meetings are to be held. He stated that in order to change the meetings, the Council will need to adopt an ordinance and amend the Redevelopment Agency Bylaws. He said that the major reason for changing the meeting schedule is for adoption of ordinances; as ordinances cannot be adopted at special meetings. The action before the Council/Redevelopment Agency is to introduce an ordinance/amend the Bylaws that would authorize meetings to be held on the 1st, 3rd and 4th Wednesdays of each month for both the Council and Redevelopment Agency; all meetings to begin at 7 p.m. He informed the Council/Agency Board that staff is also recommending a text change that would cancel a meeting should the meeting fall on a holiday. Should staff find that there is a need for a meeting before the next regular scheduled meeting, it will come before the Council to request a special meeting be held.

Mayor/Chairman Kennedy opened the floor to public comment. No comments were offered.

Acting as City Council:

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1762, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1762, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.04.010 OF THE MUNICIPAL CODE, REGARDING THE TIME AND LOCATION OF THE COUNCIL MEETINGS**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Acting as Redevelopment Agency Board:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** the Proposed Amendments to the Amended and Restated Bylaws of the Redevelopment Agency of the City of Morgan Hill.*

29. CITY COUNCIL/REDEVELOPMENT AGENCY UPCOMING AND SUMMER MEETING SCHEDULE

Council Services & Records Manager Torrez presented the staff report and requested City Council direction regarding upcoming and summer meeting schedule.

Council/Agency Member Sellers indicated that several cities do not meet during the month of August. He said that there are two advantages to not meeting during the month of August: 1) consistency so that the City organization, including the Council, has enough time to plan the year accordingly; 2) the Council would not have to go through the review of its summer meeting schedule every year; if this policy is adopted to state the Council will not meet in August. Adoption of the policy would formalize the actions the Council is already taking and would give reassurance to the Council in planning its schedule.

Action: *Council/Agency Member Sellers made a motion, seconded by Mayor Kennedy, to direct staff to return with a policy to stipulate the Council will not meet during the month of August.*

Council/Agency Member Tate indicated that he was uncomfortable in not having the capability of meeting during the month of August.

Council/Agency Member Sellers informed the Council/Agency Board that he contacted staff earlier today to find out if there were internal issues that the Council/Agency Board needs to deal with, or impacts to internal planning. He stated that staff indicated that they did not believe there were.

Council/Agency Member Tate understood the advantages to individuals with families who would like to schedule vacations, but expressed concern that an item may come up that would necessitate Council/Agency Board action.

City Manager/Executive Director Tewes said that as a general policy, canceling Council/Redevelopment Agency meetings during the month of August is feasible as there is always the opportunity to call special meetings, if necessary. He indicated that he wanted to insure that a milestone does not occur in August that would keep the City from achieving its objectives relating to the Redevelopment Plan adjustment. He stated that the month of August would end the environmental impact review process for the Plan amendment which does not require a Council meeting. He did not see any objections, on staff's part, to establishing a policy that the Council be dark in August as long as the Council has the ability to call a special meeting, if necessary. He noted that it has been the Council's practice to cancel the meeting on the 3rd Wednesday in August.

Mayor Kennedy recommended that staff return with a policy that would facilitate cancellation of meetings in August. Staff is to review the schedule to make sure the Council does not have a conflict at a future meeting.

Council/Agency Member Carr recommended the Council review other options such as canceling the first meeting in July as it is near the Fourth of July and the first meeting in August as a standard practice. This would give the Council two weeks in July and two weeks in August to go dark; and yet have the ability to conduct business, rather than going dark for a block period of time.

Council/Agency Member Tate stated his support of Council/Agency Member Carr's suggestion of canceling the first meeting in July and the first meeting in August. As an alternative, the Council could cancel the first meeting in July and cancel the first and second meetings in August; holding the third meeting in August.

Council/Agency Member Sellers stated his support of canceling the Council/Redevelopment Agency's first meeting in July and the first and second meetings in August.

Action: *Council/Agency Member Sellers amended the motion, seconded by Council/Agency Member Tate, to **cancel** the first meeting in July, and the first and second meetings in August. The motion carried unanimously (5-0).*

Council/Agency Member Sellers indicated that he would not be in attendance at the May 17 meeting. He inquired whether the Council wishes to consider canceling the May 17 meeting in light of the League of California Cities Legislative Trip to Sacramento.

Council/Agency Member Carr said that the Council/Agency Board needs to be careful in setting a policy where it would be canceling a set number of meetings throughout the year. He suggested the May 17 meeting is one the Council may wish to cancel in order to allow Council members to attend the Legislative Trip to Sacramento.

Council/Agency Member Tate noted that the Council would be meeting on May 19 in a workshop and that consent calendar items could be agendaized for that meeting.

Action: *On a motion by Council/Agency Member Carr and seconded by Mayor/Chairman Kennedy, the City Council/Agency Board unanimously (5-0) canceled its May 17, 2006 meeting.*

City Council Action (Continued)

OTHER BUSINESS:

30. OUTSIDE AGENCY ASSIGNMENTS

Council Member Carr addressed the assignments of the Public Safety & Community Services, the Community & Economic Development and the City School Liaison Committees. He indicated that he and Council Member Tate would serve on the City School Liaison Committee. He was not clear whether the Corporation Yard Commission would fall under the Utilities & Environment Committee or the Public Safety & Community Services Committee. He identified recommended appointments to the following committees: Emergency Preparedness Council - Tate; South County Housing, Community & Economic Development Committee - Carr; Library Joint Powers Authority - Tate; Community Health Foundation - Carr & Tate; Youth Empowered for Success/Youth Advisory Committee/Cornerstone Project - Tate; SCRWA – Utilities & Environment Committee; Parks & Recreation Commission Liaison - Carr; Library, Culture & Arts Commission Liaison - Tate.

Mayor Pro Tempore Grzan indicated that the Corporation Yard Commission would fall under the purview of the Utilities & Environment Committee (Grzan & Kennedy).

Council Member Sellers indicated that he spoke with Dan Ehrler today who indicated that the Chamber of Commerce is undertaking a series of bylaw amendments. He said that the last time the Chamber of Commerce reviewed their bylaws; the Chamber asked the Mayor to serve as the City's liaison. He said that the Chamber of Commerce would be reviewing the City liaison assignment. In order to align Council Committee assignments, the Chamber of Commerce liaison may or may not be the Mayor, depending on who is serving on the Community & Economic Development Committee. Therefore, the Council may wish to look at the Chamber liaison assignment to ensure that the assignment aligns with the Council's Committee structure.

Mayor Kennedy said that there are certain responsibilities the mayor has that would be appropriate, and that serving as the liaison to the Chamber of Commerce may be an appropriate role for the mayor to serve.

Council Member Sellers said that the Community & Economic Development Committee expressed concern with the lack of communication. He said that there are times when this Committee has not been fully apprised about Chamber of Commerce board meetings. He recommended the Council ask the Chamber of Commerce to accommodate two members of the Council serving in a liaison capacity.

City Manager Tewes informed the City Council that staff made an executive decision to align the League of California Cities Peninsula Division to the Financial Policy & Legal Affairs Committee as there were no assignments listed under this Committee. He clarified that it is the practice to have all elected members on City Councils participate in the Peninsula Division to the extent that members are able. He indicated that the League of California Cities has asked that each city appoint a liaison, therefore, this is a new assignment.

Council Member Tate noted that the Council has individuals assigned to the League of California Cities Peninsula Division.

Council Member Sellers referred to the Ad Hoc Governmental Committees and outside agencies. He noted that there were ad hoc committees listed and requested clarification.

Mayor Kennedy indicated that the Cities Association established these ad hoc committees last year. He said that the Utilities & Environment Committee can take on the South County Wastewater Regional Authority assignment.

Regarding the Peninsula Division liaison assignment, Council Member Carr indicated that the Council has a Committee in place that deals with regional issues. He felt the League of California Cities Peninsula Division is a regional body and should not fall under the Financial Policy & Legal Affairs Committee. He indicated that he could not find any outside assignments that fall under the purview of the Financial Policy & Legal Affairs Committee. However, he would not object to this assignment remaining with this Committee.

Council Member Sellers and Mayor Kennedy agreed that the Peninsula Division assignment would fall under the Regional & Transportation Committee. However, it was noted that this Committee is busy.

Mayor Kennedy supported placing the Peninsula Division liaison assignment under the Financial Policy & Legal Affairs Committee in order to spread the assignments.

Council Member Sellers addressed the Valley Transportation Authority (VTA) and the comments he made regarding the Mayor being inconsistent. Having spoken with several individuals involved with VTA, they reiterated the same concern. He indicated that he has academic and professional conflicts. Therefore, it would not be an option for him to be able to rotate and be the representative to the VTA. Further, it would disrupt the Council's committee structure should anyone other than the Mayor or he take on this assignment. He stated that he and Mayor Kennedy had a discussion about this assignment and some of the issues that raised concerns. He felt it made sense to have the Mayor serve as the VTA representative. In order to alleviate his concerns and those of others, he requested that there be closer communication between the Regional & Transportation Committee members. Further, that he, as the VTA Policy Advisory Committee (PAC) member, or Mayor Kennedy, as the VTA Board member, do not undertake any initiative without discussion at the Council Committee level. There should not be meetings with other groups without having communicated with the other committee member. He indicated that Mayor Kennedy will be representing three cities this year; however, the three cities do not always agree on items. He suggested that significant votes not be taken without having a Council vote. He noted that the other two cities represented by Mayor Kennedy on the VTA have an off year election this year. However, both Regional & Transportation Committee members have elections this year and it is not known who will be elected to office. He informed the Council that VTA precludes a Board member from serving as an alternate to PAC. He recommended that Council Member Carr serve as alternate to the PAC as he would be able to attend the meetings based on the time and location the meetings are held. He noted that Council Member Carr is not running for re-election this fall. This will provide assurance that Morgan Hill will have one Council member who would have some familiarity with VTA issues no matter what happens this fall.

Mayor Kennedy felt it would be appropriate for Council Member Carr to serve as alternate to PAC because he cannot serve as an alternate, serving as a board member. With respect to communication as a board member of VTA, he indicated that information and meetings are fluid. He said that major VTA

Board discussions are scheduled to take place on March 2. He said that presenting information to the Regional Planning & Transportation Committee is difficult as the meetings are not frequent enough to keep up with decisions and discussions taking place. He stated that his hands would be tied should he agree not to take action without receiving concurrence from the City Council. On the other hand, he felt it important that he not act unilaterally with respect to the major VTA scenarios (sales tax, BART, etc.). He noted that there are discussions being held that lead to the major VTA decisions. In order to get agreements in place requires discussions and meetings. He stated that it may be hard to keep the Council informed every step of the way.

Interim City Attorney Siegel said that the fact that Council Member Sellers and Mayor Kennedy serve on the Regional Planning & Transportation Committee does not override the ability for both members to discuss issues. He noted that the Council committees are not decision bodies. The committees bring items forward to the Council or other commissions. He indicated that conveyance of information between committee members is not in violation of the Brown Act; it is consensus building that may be a violation.

Council Member Sellers did not believe that conversations between Committee members would be on taking votes, but merely to update each other on meetings and discussions to be held. He felt there were inconsistencies in what is coming out from Morgan Hill. He felt the City of Morgan Hill needs to have a consistent message/direction. He recommended that he and Mayor Kennedy communicate regularly, yet maintain the regular committee structure.

Council Member Carr stated that the Committee may need to consider its meeting schedule so that issues are discussed in a timely manner before VTA board meetings are held. Should the Committee be split on positions, he felt the larger decisions need to come before the Council. Once the Council has its dialogue and it comes to an agreement on what is beneficial for Morgan Hill, and the Mayor represents this position, he would support Mayor Kennedy relaying this position at said meetings.

Mayor Kennedy noted that the Council will be discussing VTA scenarios on February 22 to indicate whether or not the Council supports the ¼ cent sales tax.

Action: *Council Member Sellers made a motion, seconded by Council Member Tate, to have the Regional Planning & Transportation Committee have close communications as VTA deliberations take place and that there be no major vote taken without a direction from the Council. The motion carried unanimously (5-0).*

Council Services & Records Manager requested that the Council review the outside assignments to ensure that staff has accurately reflected the appropriate assignments.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the amendments to the Current List of Assignments and Appointments and Suggested Changes to the Mayor.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Mayor's appointments of Council Members to Outside Agencies as identified.*

Council Member Carr felt that the Morgan Hill Chamber of Commerce assignment falls under the purview of the Community & Economic Development Committee as their issues are economic development in nature. He felt it should be up to the Council to determine who would be its representative to the Chamber, and not allow the Chamber to decide who they want representing the City.

Mayor Kennedy noted that not all of the Morgan Hill Chamber of Commerce issues are economic development issues, but Chamber of Commerce issues as well. He noted that the Mayor plays a role at Chamber of Commerce events. Therefore, there would be an overlap of activities.

Council Member Sellers indicated that as chair to the Community & Economic Development Committee, he would make sure that the Committee reviews legal issues before sending a Council liaison to the Chamber of Commerce.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** the City Clerk to Notify the Appropriate Agencies of Amended Assignments.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:55 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY